

Possession of Property by Plaintiff (Condemnor) in Condemnation Actions

for the Eminent Domain Subcommittee of the Environmental Quality Council
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Eminent domain actions inherently include the transition of property from the condemnee to the condemnor. However, when does possession of the property change hands from the condemnee to the condemnor? Possession of the property is specifically addressed in statute in Section 70-30-31, MCA, **Putting plaintiff in possession**. Before any decisions can be made in regards to the adequacy of the current policy, that current policy must be understood. This paper describes the current process that is allowed for possession of the property to be taken by the plaintiff.

When can the plaintiff take possession?

The plaintiff can take possession:

- any time after the filing of the preliminary condemnation order,
- after the report and assessment of the commissioners,
- before or after appeal from the commissioner's assessment,
- before or after appeal from any other order or judgement in the proceedings.

How does the plaintiff take possession?

- The plaintiff makes an application to the court.
- The Court has the power to order to following:
 1. If the plaintiff is already in possession of the property, the plaintiff may continue possession.
 2. If the plaintiff is not in possession of the property, the plaintiff may take possession of the property, remain in possession of the property, and use the property until the final conclusion of the proceedings and litigation.

Is the plaintiff required to provide compensation before taking possession?

Before the plaintiff can take possession of the property, he must deposit compensation with the court. If the defendant (condemnee) has filed a statement of claim with the court, according to Section 70-30-207, MCA, the amount deposited must meet the sum identified in the statement. If the commissioners or jury have assessed an amount for just compensation, the amount deposited must meet this assessment.

If the condemnee fails to file a statement of claim within the 30 days allowed in Section 70-30-207, MCA, the plaintiff may obtain an order for possession, with the condition that the plaintiff's payment into the court be made within 10 days after receiving the defendant's statement of claim.

Are there other payments or securities that may be required?

In the case where the defendant appeals, the court may require the plaintiff to give bond or sureties to pay the defendant any additional damages or cost over and above the amount assessed for the appropriation of the property. These bonds and/or sureties would also cover all damages the defendant may sustain if the property in question is not taken for public use.

The court must approve these bonds and/or sureties as well as determining their sum.

What is considered just compensation?

The amount assessed by the commissioners or by the jury on appeal, shall be taken and considered, until reassessed or changed in further proceedings, as just compensation for the property appropriated.

Does payment into court by the plaintiff or withdrawal of funds from the court by the defendant preclude any further legal proceedings?

The plaintiff, by paying into the court the amount claimed in the answer or the amount assessed or by giving security, shall not be prevented or precluded from appealing the assessment. The plaintiff may appeal in the same manner and with the same effect as if no money had been deposited or security given.

In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, the defendant, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the deposited money. The defendant, by making a demand, shall not be barred or precluded from his right of appeal from such assessment.

Is the use of the money demanded from the court limited?

The defendant may take and prosecute his appeal from such assessment. However, if the amount of the assessment is reduced on appeal, by either party, the defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount received by him over the amount finally assessed. Legal interest will be applied for any excess received by the defendant from the time the defendant receive the money. The legal interest may be recovered through court action. The jury, upon appeal from the assessment of the commissioners, may find a less as well as an equal or greater amount than that assessed by the commissioners.

How much of the deposit into the court may the defendant withdraw?

The court shall not order the delivery to any defendant of more than 75% of the money deposited on his account unless the defendant posts a bond equal to the amount in excess of 75%, with sureties to be approved by the court. This bond would be used to repay the plaintiff amounts which are withdrawn that are in excess of final award in the proceedings.